

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CR NO. 2:17cr382-WKW-WC
)	
SAMUEL DEAN PENDERGRASS)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Pending before the court is Defendant's Motion to Dismiss Indictment (Doc. 10). On August 29, 2017, an indictment against Defendant was entered, charging him with failing to register as a sex offender when he traveled to the State of Alabama in November 2016. *See* Doc. 1. The indictment asserts that Defendant is subject to the Sex Offender Registration and Notification Act ("SORNA") based upon his conviction for Rape Second Degree in Oklahoma in 1998. *Id.*

In his pending motion, Defendant asserts that the application of SORNA to him violates the Ex Post Facto clause because his conviction predates the enactment of SORNA. Doc. 10 at ¶ 2. However, Defendant concedes that this court must deny his motion because the Eleventh Circuit, in *United States v. W.B.H.*, 664 F.3d 848, 860 (2011), has previously ruled that the retroactive application of SORNA does not violate the Ex Post Fact Clause. *Id.* at ¶ 3. Nonetheless, Defendant files the motion "to preserve the issue for review" by the Eleventh Circuit sitting *en banc* or by the United States Supreme Court. *Id.* at. ¶ 4.

Upon consideration of the motion, applicable caselaw, and Defendant's own concession that the motion should be denied at this time, the undersigned

RECOMMENDS that Defendant's Motion to Dismiss Indictment (Doc. 10) be DENIED.

It is further ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **November 1, 2017**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive, or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); *see Stein v. Reynolds Sec., Inc.*, 667 F.2d 33 (11th Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

Done, this 18th day of October, 2017.

/s/ Wallace Capel, Jr.

CHIEF UNITED STATES MAGISTRATE JUDGE